

## **REMARKS**

Reconsideration of this application is respectfully requested in view of the amendments made above and the remarks contained herein.

### **STATUS OF CLAIMS AND SUPPORT FOR AMENDMENTS**

Upon entry of this amendment, claims 1-29 will be pending in this application. Support for the amendment to claim 10 can be found in the specification at page 11, lines 17-19.

### **INDICATION OF ALLOWABLE SUBJECT MATTER**

Applicants note with appreciation the indication by the Office at page 4 of the Office action dated January 21, 2009 that claims 1-9 would be allowable pending resolution of the obviousness-type double patenting rejection and the indefiniteness rejections raised by the Office in the January 21, 2009 Office action. Applicants submit that these rejections have been fully addressed herein, and that therefore claims 1-9 should be allowed.

Applicants also note with appreciation the indication by the Office that the subject matter of claim 12 is distinguished over the art of record.

For the reasons given below, Applicants respectfully submit that all of the claims in this application are in condition for allowance.

### **OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION**

At pages 2-3 of the Office action dated January 21, 2009, the Office has provisionally rejected claims 1-29 under the judicially-created doctrine of obviousness-type double patenting over claims 1-38 of copending application Serial No. 10/549,396. Applicants respectfully traverse this rejection for the reasons given below.

U.S. Serial No. 10/549,396 is abandoned. Accordingly, this rejection is moot.

#### INDEFINITENESS REJECTION

At page 3 of the Office action dated January 21, 2009, the Office has rejected claims 3-5, 11-17, 19-23, 25-27 and 29 under 35 U.S.C. § 112, second paragraph, as indefinite. Applicants respectfully traverse this rejection for the reasons given below.

Applicants have amended the claims to resolve the antecedent basis issues raised by the Office. As a result, Applicants respectfully submit that this rejection is no longer applicable, and should be withdrawn.

#### ANTICIPATION REJECTION

At page 4 of the Office action dated January 21, 2009, the Office has rejected claims 10, 11, and 13-29 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,558,780 (Vancas). Applicants respectfully traverse this rejection for the reasons given below.

The Office action states:

Vancas discloses equipment comprising mixing section 5, feed end 6', sidewalls 3, bottom 1, end walls 2 and 2', headboxes of [separated] solutions (launders 20 and 40), solid partition wall 4, and reversing element (elements 60 that may be in plural --- column 4, line 66) and/or reverser plates/fences 70 that may be situated at different heights (column 5, lines 14-18 state that these may be canted with respect to each other and thus extend to different heights with respect to each other and/or relative to reversing elements 60.

Office action dated January 21, 2009 at page 4 (emphasis added).

Applicants respectfully submit that Vancas anticipates Applicants' claims only if it discloses, within its four corners, an embodiment containing every element recited in Applicants' claims arranged as recited in the claims. See *Net MoneyIN Inc.*

*v. VeriSign Inc.*, Fed. Cir., No. 07-1565 (October 20, 2008); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983); *In re Arkley*, 455 F.2d 586, 172 USPQ 524 (CCPA 1972).

Applicants respectfully submit that Vancas does not disclose any mixing section, and that element 5 in Figure 1 is described by Vancas as a "third side," See Vancas at column 5, line 1. For at least this reason, Applicants submit that Vancas does not anticipate claim 10.

With respect to the Office's contentions with respect to the reversing element recited in claim 10, Applicants are unsure whether the Office is asserting that baffle 60 corresponds to the recited reversing element, or whether the Office is asserting that flow distribution fences 70 correspond to the reversing element, or whether the Office is asserting that a combination of baffle 60 and flow distribution fences 70 correspond to the claimed reversing element.

With respect to the first possibility, Applicants respectfully submit that baffle 60 alone does not correspond to the recited reversing element because (a) the does not consist of a first reverser plate and a second reverser plate, having a reversal channel between them; (b) the baffle does not extend transversely relative to the longitudinal axis of the apparatus of Vancas from one sidewall to a partition wall; and (c) the baffle does not contain two plates at different heights. As explained in the specification, the positioning of the plates with the flow channel in between is in part to allow for a separated solution stream to flow over the first plate, and the extraction mixture to flow under the first plate and into the reverser channel between then. By contrast, the baffle of Vancas will not allow any overflow without the liquid exiting the device completely. Instead, Applicants submit that the purpose of the baffle appears

to reduce turbulence in the fluid as it changes direction while flowing from the coalescence chamber 10 to the separator of Vancas. See Vancas at column 5, lines 1-7. It is doubtful, in Applicants' view, that such a reduction in turbulence occurs to any significant extent, since the placement of the baffle significantly reduces the cross sectional area through which the fluid flows, in effect creating a type of orifice whose edges create turbulence as fluid is accelerated through the opening. At any rate, the baffle does not satisfy the provisions of claim 10 for the reasons given above.


With respect to the second possibility, that distribution fence(s) 70 correspond to the reversing element of claim 10, Applicants note that the structure of these fences is not described in detail in Vancas, and that they thus appear to be simply standard picket fences which have been mounted at different angles with respect to the sidewalls of the apparatus. The fences are located at such a distance from each other that they cannot function as the two plates of the reversing element recited in claim 10. As Vancas states, the purpose of these fences is to reduce turbulence as the fluid enters the separator basin. Such a purpose is achieved by placing the fences at a distance from each other that non-turbulent flow will be achieved, not by placing two plates sufficiently close together that they form a reversing channel between them which changes the direction of fluid flowing between the plates. In addition, it appears from Vancas that both fences are mounted to the bottom of the apparatus, and that they are therefore not at different heights, as recited in Applicants' claims. Accordingly, distribution fences 70 do not satisfy the provisions of claim 10.

With respect to the third possibility, it is not clear from the Office action how the Office would interpret Vancas in such a way that the baffle 60 and the distribution fences 70 correspond to the elements of the reversing element recited in claim 10. If the Office is asserting that it is the combination of the baffle and the distribution fence that provides disclosure of the reversing element, the Applicants respectfully request that the Office provide a more complete explanation of this rationale. Moreover, Applicants respectfully request that any Office action containing such an explanation be made non-final, since such an Office action will be the first in which Applicants have had the benefit of this explanation, and thus the first opportunity to formulate an effective response thereto.

Respectfully submitted,

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